

## GA Court Ruling – *Brewer v. Royal Ins. Co of America*

### Additional Premium for Sub-contracted Labor

Georgia—A painting contractor, who blamed his poor reading skills for his failure to report that he used subcontractors in his business, was liable for unpaid workers' comp premiums exceeding \$88,000, according to the Georgia appeals court.

The contractor, Brewer, obtained a workers' comp insurance policy for his painting business through an agency. On the application, he indicated that he did not use subcontractors or sublet work without requesting certificates of insurance. He paid an "estimated premium" of \$750 for the policy, which ran from May 2002 to May 2003.

Under the policy terms, the employer paid an estimated premium for the year, and the insurer could conduct an audit—up to three years after the expiration of the policy term—to determine the actual payment owed. The premium was based on the amount paid for services of all officers, employees, and "all other persons engaged in work that could make us liable under... this policy." The policy also explained that the premium could be based on the contract price for their services, though premiums would not be charged for those workers if the policyholder had proof that they were covered under workers' compensation.

At the end of the first policy year in May 2003, the insurer renewed coverage for another year; Brewer paid an estimated a premium of \$850.

In July 2003, the insurer completed an audit that revealed that Brewer had used subcontractors, paying them in cash and issuing them 1099 tax forms. Based on his 2002 tax returns, which showed that his labor costs exceeded \$400,000, the insurer assessed a premium, after adjustments, of more than \$65,000 for the first policy year.

When Brewer failed to pay, the insurer cancelled the policy as of September 2003 and assessed an additional premium of \$24,000 for the second policy year through the cancellation date. Again, Brewer didn't pay.

The insurer sued Brewer for the unpaid premiums. At a hearing, Brewer admitted that he subcontracted as many of his jobs as possible. He also admitted that he did not ask his subcontractors to provide him with certificates of insurance.

Nevertheless, Brewer denied liability for the unpaid premiums, claiming that he couldn't read well enough to understand the policy terms. He claimed that the insurance agent filled out the paperwork and told him where to sign. Brewer, who had a tenth grade education, admitted that he could read and that his wife sometimes read the contents of important papers to him. He admitted that he usually just signed documents—without reading them himself or having his wife read them to him—because he trusted people.

The insurer asked the court for judgment without a trial. The court granted the request and awarded the insurer more than \$101,000 in damages and interest.

Brewer appealed.

DECISION: Affirmed.

Brewer was liable to the workers' comp insurer for the full amount of the unpaid premiums. Brewer was not excused from liability because of his failure to read the policy terms. Despite his poor reading skills, he had the ability to read the policy himself or to have his wife read it to him. No evidence showed that he was induced to sign the agreement by any action or representation amounting to fraud. A contract was formed, and it was his duty to ensure that he understood its contents before signing it.

Citation: *Brewer v. Royal Ins. Co. of America*, 7 *Fulton County D. Rep.* 232, 2007 WL 191742 (*Ga. Ct. App.* 2007)

See also: *Bossard ii. Atlanta Neighborhood Development Partnership, Inc.*, 254 *Ga. App.* 799, 564 *S.E.2d* 31(2002).

See also: *Beckwith v. Peterson*, 227 *Ga.* 403, 181 *S.E.2d* 51(1971).

### Case Notes:

The court rejected the policyholder's claim that the insurer waived its right to the higher premium because it renewed the policy for a second term before conducting an audit; The court noted that the policy allowed the insurer up to three years after expiration of the policy term to conduct the audit. Furthermore, no evidence showed that the insurer knew that Brewer's actual premium was substantially greater than the estimated premium at renewal. The policy clearly provided that the balance of the actual premium was due after an audit.

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